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| APPLICATION NO.                           | FILING DATE | FIRST NAMED INVENTOR   | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|------------------------|---------------------|------------------|
| 10/500,228                                | 09/25/2006  | Patrice Henri Lointier | 80350-1230          | 7480             |
| 24504                                     | 7590        | 08/19/2010             | EXAMINER            |                  |
| THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP |             |                        | ISHMAN, NAQUAN ERIC |                  |
| 600 GALLERIA PARKWAY, S.E.                |             |                        |                     |                  |
| STE 1500                                  |             |                        | ART UNIT            | PAPER NUMBER     |
| ATLANTA, GA 30339-5994                    |             |                        | 3734                |                  |
|   |             |                        |                     |                  |
|   |             |                        | MAIL DATE           | DELIVERY MODE    |
|   |             |                        | 08/19/2010          | PAPER            |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 10/500,228             | LOINTIER ET AL.     |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | NAQUAN ISHMAN          | 3734                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 July 2010.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-30 is/are pending in the application.  
 4a) Of the above claim(s) 1-24 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 25-30 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 25 June 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/25/2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

The following office action is in response to communications received July 12, 2010.

Claims 1-24 were previously withdrawn. Claims 25-30 are addressed below.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gau et al. (5,084,061).

3. Gau et al. discloses an intra-gastric balloon (20) for treating obesity, for implanting in the stomach of a patient to reduce the volume of the stomach, said balloon comprising a flexible envelope (22) defining a predetermined inside volume, said flexible envelope being made of silicone rubber (col. 4, lines 6-12). Though Gau et al. disclose a final thickness of approximately .0006 to .025 inches (.0152 mm to .635 mm) (Col. 4, lines 6-12), Gau et al. do not disclose the nominal thickness of the envelope is substantially equal to 0.5mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the nominal thickness of the envelope substantially equal to 0.5mm., since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

4. Gau et al. disclose the claimed invention except for the dimensional tolerance being in the range of 1-20% or 10-16%, it would have been obvious to one having ordinary skill in the art

at the time the invention was made to utilize such ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

5. Claims 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gau et al. (5,084,061) in view of Thome et al. (5,800,486)

6. Gau et al. disclose making an intragastric balloon from silicone rubber cast on a mandrel (Col. 4, lines 6-7) but do not disclose the method of fabricating an intragastric balloon comprising injecting an elastomer material into a mold in order to obtain a flexible pouch that is to form the envelope of the balloon.

7. Thome et al. disclose forming a medical balloon 37, by liquid injection molding from a flexible medical grade silicone (Col. 6, lines 49-51). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the injection molding process of Thome et al. to make the intragastric balloon of Gau et al. in order to better control the thickness of the resulting intragastric balloon.

8. Regarding claim 30, Gau et al. and Thome et al. disclose the invention essentially as claimed except for the mold comprises a top cavity pressed against a bottom cavity with a spherical core positioned between the top and bottom cavity. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a mold comprising a top cavity pressed against a bottom cavity with a spherical core positioned between the top and bottom cavity in order create a balloon with a wall thickness, and internal hollow volume.

***Response to Arguments***

1. Applicant's arguments, see remarks, filed July 12, 2010, with respect to the rejection(s) of claim(s) 25-30 under U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Gau et al. (5,084,061) and Thome et al. (5,800,486)

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NAQUAN ISHMAN whose telephone number is (571)270-7783. The examiner can normally be reached on Monday through Friday 10am until 7pm (Off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. I./  
Examiner, Art Unit 3734

/TODD E. MANAHAN/  
Supervisory Patent Examiner, Art Unit 3734